IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Crl.MC.No. 150 of 2007()

AGAINST THE ORDER DATED / / IN CMP 2348 2006 IN ST.406/2004 of

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PETITIONER:

K.B. KANNAN, AGED 42 YEARS,
S/O. BALAN, KELAMANGALATH,
S.R.M. ROAD,
ERNAKULAM.

BY ADV. SRI.P.J.JOSEPH PANIKKASSERY

RESPONDENTS:

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1. BABU @ MALAYAN, S/O. CHARLEY.K.,
MALAYAN, NOW RESIDING AT ULLATIL
HOUSE, MULAMTHURUTHY,
ERNAKULAM DISTRICT.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 150 OF 2007

Dated this the 18th day of January, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the N.I. Act.

2. Signature in the cheque is not disputed. A contention is raised as early as in the reply notice, it is submitted, that the cheque was issued not for the due discharge of any legally enforceable debt/liability; but only as security for a loan transaction entered into between the petitioner's father and the complainant. The matter has reached the stage of trial. It has reached the stage of defence evidence. At that stage, an application was filed that a document produced by the accused as Ext.D1 may be sent to the handwriting expert. That document, it is said, was marked subject to proof while the accused was being examined as a witness. The complainant challenged Ext.D1 and at that stage, the petitioner filed an application to forward the cheque to the handwriting expert for comparison. That petition was dismissed by the impugned order. The petitioner has come to

this Court with a prayer that the powers under Sec.482 of the Cr.P.C. may be invoked to quash the order and to direct that the cheque be forwarded to the handwriting expert.

3. The impugned order is an interlocutory order and not amenable to the revisional jurisdiction of this Court. That obviously explains the reason why the petitioner has come to this Court with the label of a petition under Sec.482 of the Cr.P.C. An interlocutory order, even if it be incorrect, must normally wait to be challenged along with the final order to be passed in the prosecution. No revision is maintainable. But the mere fact that the revision is not maintainable will not fetter the powers of this Court under Sec.482 of the Cr.P.C. to interfere with the impugned order, if the conscience of the court is satisfied that failure or miscarriage of justice results from the impugned order. The short question then is whether there is any such possibility of failure or miscarriage of justice resulting from the impugned order.

4. It is categorically admitted at the Bar that this disputed document - Ext.D1 is not pleaded in the reply notice. It is also

conceded that when P.W.1 was in the witness stand, he was not confronted with this document. These circumstances cannot be ignored or overlooked when the prayer for invocation of the extraordinary inherent jurisdiction is made.

5. Having considered all the relevant inputs, I am certainly of opinion that this is not a fit case where the extraordinary inherent jurisdiction deserves to be invoked. This petition deserves to be dismissed.

6. In the result, this Crl.M.C. is dismissed. But I may hasten to observe that the dismissal of this petition will not fetter the rights of the petitioner to challenge the impugned order if the same be necessary along with the final order to be passed in the prosecution by the learned Magistrate.

7. The learned counsel for the petitioner submits that if the cheque is not forwarded to the handwriting expert, the petitioner would like to adduce other oral evidence to prove Ext.D1. No prayer to that effect has so far been made before the learned Magistrate, it is submitted. It is for the petitioner to make such application if he wants and I have no reason to assume that the

learned Magistrate would not consider such application on merits and in accordance with law. No directions need, in these circumstances, be issued about the disposal of an application which is proposed to be filed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge